A

ADAM ATAN

v.

PP

B

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
LOW HOP BING JCA
ABDULL HAMID EMBONG JCA
[CRIMINAL APPEAL NO: J-05-104-2006]

C

12 JUNE 2008

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39A(2) - Possession of dangerous drugs - Appeal against sentence - Error in principle - Manifestly excessive - Whether there was an appealable error*

D

CRIMINAL PROCEDURE: *Sentence - Appeal against sentence - Conviction of possession of dangerous drugs under s. 39A(2) Dangerous Drugs Act 1952 - Error in principle - Manifestly excessive - Whether there was an appealable error*

E

This was an appeal against the order of the High Court convicting the appellant of an offence of possession under s. 39A(2) of the Dangerous Drugs Act 1952 ('Act') and sentencing him to a period of 16 years imprisonment and the statutory minimum of ten strokes of the rattan. The appellant was originally

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charged for the offence of trafficking under s. 39B of the Act. At the close of the prosecution's case, the trial judge amended the charge to one under s. 39A(2) of the Act and called on the appellant to make his defence to the amended charge. The appellant gave evidence and was subsequently found guilty,

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convicted and sentenced at the close of the whole case. The appellant only appealed against the sentence, submitting that it was manifestly excessive taking into account the totality of the facts and circumstances of this case.

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Held (dismissing the appeal)
Per Gopal Sri Ram JCA delivering the judgment of the court:

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(1) The quantity of drugs involved in this case was 379.36 grams of cannabis, which was 7½ times the statutory trigger prescribed by s. 39A of the Act. There was therefore no doubt that this was a very serious case. The circumstances were aggravated by the way in which the drugs in question

were packed as when they were seized, they were found to be in small packets facilitating easy disposal. The sentence imposed in this case was extremely fair and, if anything, on the lower side of the tariff which this court has fixed at 18 years for offences of this nature. Having considered the judgment of the judge most carefully and taking into account the facts of this particular case especially the fact that the appellant did not plead guilty but contested the case all the way, there was no appealable error detectable. The sentence neither suffered from an error in principle nor was it manifestly excessive. (paras 4 & 8)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan menentang sesuatu perintah Mahkamah Tinggi yang menyabitkan perayu ke atas kesalahan milikan di bawah s. 39A(2) Akta Dadah Berbahaya 1952 ('Akta') dan menghukumnya ke 16 tahun di penjara dan sepuluh pukulan rotan minima statutori. Perayu pada asalnya dituduh atas kesalahan mengedar di bawah s. 39B Akta. Pada penghujung kes pendakwaan, hakim perbicaraan meminda tuduhan kepada tuduhan lain di bawah s. 39A(2) Akta dan meminta perayu membuat pembelaanya terhadap tuduhan yang dipinda itu. Perayu memberi keterangan dan selepas itu didapati bersalah, disabit dan dihukum pada penghujung seluruh kes. Perayu hanya merayu terhadap hukuman, dengan menghujah bahawa ia dengan jelas keterlaluan mengambil dalam pertimbangan keseluruhan fakta-fakta dan keadaan kes ini.

Diputuskan (menolak rayuan)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

(1) Kuantiti dadah yang terlibat dalam kes ini ialah 379.36 gram kanabis, iaitu 7½ pencetus statutori yang ditetapkan oleh s. 39A Akta. Oleh itu tidak ada apa-apa keraguan bahawa ini adalah kes yang sangat serius. Keadaannya bertambah teruk memandangkan cara dadah tersebut dibungkus sebab apabila ianya disita, ia dijumpai di dalam paket-paket kecil yang memudahkan penjualan dengan senang. Hukuman yang dikenakan dalam kes ini merupakan sangat adil dan, kalau apa-apa pun, pada tahap rendah tarif yang mahkamah ini telah tetapkan pada 18 tahun bagi kesalahan-kesalahan macam ini. Setelah mempertimbangkan penghakiman hakim dengan amat

A teliti dan mengambil fakta-fakta kes ini dalam pertimbangan terutamanya fakta bahawa perayu tidak memplid bersalah tetapi telah mempertikaikan kes ini sepanjang perbicaraan, tiada apa-apa kesalahan yang boleh dirayu yang dapat dikesan. Hukuman tersebut tidak dijejas oleh sesuatu kesilapan
B berdasarkan prinsipal ataupun jelas keterlaluan.

Legislation referred to:
Dangerous Drugs Act 1952, ss. 39A(2), 39B

For the appellant - Hairol Nizam Omar; M/s S Letchumanan & H Nizam
C *For the respondent - Jamhirah Ali DPP*

[Appeal from High Court, Johor Bahru; Criminal Case No: MT(1) 45-68-03]

Reported by Suresh Nathan
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JUDGMENT

Gopal Sri Ram JCA:
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[1] This is the judgment of the court.

[2] This is an appeal directed against the order of the High Court Johor Bahru convicting the appellant of an offence of
F possession under s. 39A(2) of the Dangerous Drugs Act 1952 ("the Act') and sentencing him to a period of 16 years imprisonment and the statutory minimum of ten strokes of the rattan. The accused was originally charged for the offence of trafficking under s. 39B of the Act. At the close of the
G prosecution's case the learned trial judge amended the charge to one under s. 39A(2) of the Act and called on the appellant to make his defence to the amended charge. The appellant gave evidence and at the close of the whole case was found guilty and convicted and the orders already adverted to were passed upon
H him.

[3] The appellant has appealed against sentence only. Learned counsel appearing for him argued that the sentence is manifestly excessive taking into account the totality of the facts and circumstances of this case.
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[4] Now, the quantity of drugs involved in this case is 379.36 grammes of cannabis. This, as pointed out by the learned deputy, is 7 1/2 times the statutory trigger prescribed by s. 39A of the Act. There is therefore no doubt in our minds that this is a very serious case. The circumstances here are aggravated by the way in which the drugs in question were packed. When seized they were found to be in small packets facilitating easy disposal.

[5] It is well established that a sentencing court must have regard to the public interest when determining measure of punishment that is to be imposed in any given case. It is then to take into account the particular and peculiar facts and circumstances operating in mitigation in favour of the accused. It then has to carry out a balancing exercise. A sentencing court is also entitled to take into account the antecedents of the accused as well as the frequency of the commission of the offence in general. At the end of the day, it is essentially a matter within the discretion of the sentencing court to determine, having carried out the balancing exercise, the appropriate measure of sentence to be imposed in a particular case.

[6] In an appeal against sentence, the initial function of this court is one of review only. The fact that each of us sitting separately or together would have imposed a lesser sentence is irrelevant. The appellant must satisfy this court that the sentencing court has either erred in principle or imposed a sentence that is manifestly excessive. We find it unnecessary to cite any authority in support of this well established principle.

[7] There is no gainsay that drug offenders are a menace to society. They are nothing less than serpents on the front lawn of justice and should be dealt with accordingly. Everyday we read in the newspapers about the efforts of the law enforcement agencies in seizing large quantities of dangerous drugs and of the deleterious nature of these drugs which is visited upon members of our society, in particular our youth. The courts will be failing in their duty if they do not take a serious view towards the offences of this nature. The sentence imposed must not only be commensurate with the offence in this case but must also stop would be offenders dead in their tracks from committing it.

[8] We are satisfied that the sentence imposed in this case is extremely fair and if anything on the lower side of the tariff which this court has fixed at 18 years for offences of this nature. Having considered the judgment of the learned judge most carefully and taking into account the facts of this particular case especially the fact that the appellant did not plead guilty but contested the case all the way, we are unable to detect any appealable error. In our judgment the sentence passed does not suffer from an error in principle; neither is it manifestly excessive. This appeal is accordingly without merit and we would dismiss it. The orders of the High Court are affirmed.